



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification No.:

UIL Code:

4941.00-00

4941.04-00

4945.00-00

Legend:

L =

M =

N =

O =

P =

R =

S =

T =

U =

V =

W =

Dear :

This letter is in response to your request seeking rulings that the liquidation of three limited partnerships and the pro rata distribution of their respective assets to their respective partners will not constitute an act of self-dealing under section 4941 of the Internal Revenue Code, or a taxable expenditure under section 4945.

Facts

You are an organization described in section 501(c)(3) of the Code and a private foundation within the meaning of section 509(a). Currently, your Board of Directors consists of 10 persons, three of whom are L, M and a related person. You own interests in three limited partnerships, N, O and P, as described below.

N

N is a limited partnership that owns land on which an apartment building is situated. The property is subject to a mortgage. Pursuant to a ground lease, N leases this land to O.

You, R, S, T, and U are the limited partners in N, and V is the general partner. R is controlled by L and S is controlled by M. You represent that both T, U and V are unrelated to you and to either L or M, and that neither T, U nor V is a disqualified person with respect to you under section 4946 of the Code.

You represent that because L and M are two of your directors, they are disqualified persons under section 4946 of the Code with respect to you. You also represent that R (because it is controlled by L) and S (because it is controlled by M) are disqualified persons with respect to you. In addition, you represent that because R and S together own less than a 35 percent profits interest in N, N is not a disqualified person with respect to you.

### Q

Q is a limited partnership that owns the apartment building situated on the land owned by N. The property is subject to a mortgage. Q leases this land from N pursuant to a ground lease.

You are the limited partner in Q and N is the general partner. You represent that because N is not a disqualified person with respect to you, Q is not a disqualified person with respect to you.

### P

P is a limited partnership that owns an apartment complex. You, R and S are the limited partners and W is the general partner. You represent that P is a disqualified person with respect to you.

You contemplate that the following transactions will occur:

- N will liquidate and distribute all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests. As a result, the land subject to the ground lease, currently owned by N, will be owned pro rata by N's partners as tenants-in-common.
- Q will liquidate and distribute all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests. As a result, the apartment building and the ground lease currently owned by Q will be owned pro rata by Q's partners as tenants-in-common.
- P will liquidate and distribute all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests. As a result, the apartment complex, currently owned by P, will be owned pro rata by P's partners as tenants-in-common.

### Rulings Requested

1. The liquidation of N and the distribution of all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests will not constitute an act of self-dealing under section 4941 of the Code or a taxable expenditure under section 4945.
2. The liquidation of Q and the distribution of all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests will not constitute an act of self-dealing under section 4941 of the Code or a taxable expenditure under section 4945.
3. The liquidation of P and the distribution of all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests will not constitute an act of self-dealing under section 4941 of the Code or a taxable expenditure under section 4945.
4. Notwithstanding the ownership interests of L and M in Q and P, the payment by each partnership of its proportionate share of the cost of obtaining the rulings set forth in this ruling request will not constitute an act of self-dealing under section 4941 of the Code or a taxable expenditure under section 4945.

### Law

Section 170(c)(2)(B) of the Code describes organizations that are organized and operated exclusively for religious, charitable, scientific, literary or educational and other specific purposes.

Section 501(c)(3) of the Code describes organizations that are organized and operated exclusively for charitable, educational, and other purposes, and that no part of its net earnings inure to the benefit of any private shareholder or individual.

Section 509 of the Code provides that an organization described in section 501(c)(3) is a private foundation unless it meets certain exceptions.

Section 4941(a) of the Code imposes excise taxes on each act of self-dealing between a “disqualified person” and a private foundation. The tax is paid by the self-dealer and by the “foundation manger” who participated in the transaction.

Section 4941(d)(1) of the Code defines the term “self-dealing” as including certain direct or indirect transactions, including a sale or exchange or leasing of property between a private foundation and a disqualified person, the payment of compensation (or payment or reimbursement of expenses) by a private foundation to

a disqualified person, and the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4941(d)(2)(F) of the Code and section 53.4941(d)-3(d)(1) of the regulations provide that any transaction between a private foundation and a corporation that is a disqualified person with respect to the private foundation, pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization or reorganization, is not an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for the receipt by the foundation of no less than fair market value.

Section 53.4941(d)-1(a) of the Foundation and Similar Excise Taxes Regulations provides that the term "self-dealing" means any direct or indirect transaction described in section 53.4941(d)-2, which are: (a) the sale or exchange of property; (b) leases; (c) loans; (d) the furnishing of goods, services or facilities; (e) payment of compensation; (f) the transfer or use of the income or assets of a private foundation; and (g) the payment to a government official.

Section 53.4941(d)-1(b)(4) of the regulations provides that a transaction between a private foundation and an organization that is not controlled by the foundation, and of which disqualified persons do not own more than 35 percent of the profits interest, is not treated as an indirect act of self-dealing between the foundation and these disqualified persons solely because of the ownership interest of these persons in the organization.

Section 53.4941(d)-1(b)(5) of the regulations provides that an organization is controlled by a private foundation if the foundation or one or more of its foundation managers (acting only in that capacity) may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction, which, if engaged in with the private foundation, would constitute self-dealing.

Section 4945 of the Code imposes an excise tax on each "taxable expenditure" made by a private foundation. The tax is paid by the foundation and by the "foundation manager" who agreed to making the expenditure.

Section 53.4945-6(a) of the regulations states that under section 4945(d)(5) of the Code, the term "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-6(b)(1) of the regulations provides that certain types of expenditures ordinarily will not be treated as taxable expenditures under section 4945(d)(5) of the Code. Section 53.4945-6(b)(1)(i) refers to expenditures to acquire investments entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B) of the Code, and section

53.4945-6(b)(1)(ii) of the regulations refers to reasonable expenses with respect to these investments.

Section 4946(a) of the Code defines the term "disqualified person" with respect to a private foundation as including a person who is a "foundation manager" of the foundation, and a partnership in which the "foundation managers" of the private foundation own more than 35 percent of the profits interest in the partnership.

Section 4946(b) of the Code defines the term "foundation manager" with respect to a private foundation as including any officer, director or trustee of the foundation.

### Analysis

#### Ruling 1

N is a limited partnership in which you own a limited partnership interest. You represent that because L and M are two of your directors, they are disqualified persons under section 4946 of the Code with respect to you. However, because the two entities L and M control, R and S, together own less than a 35 percent profits interest in N, N is not a disqualified person with respect to you.

You contemplate that N will liquidate and distribute all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests. As a result, the land currently owned by N will be owned pro rata by N's partners as tenants-in-common.

#### Section 4941

Section 4941(a) of the Code imposes excise taxes on each act of self-dealing between a disqualified person and a private foundation. Section 4946 provides that a partnership is a disqualified person if directors or trustees of the private foundation own more than 35 percent of the profits interest in the partnership. Although L and M are two of your directors, because the two entities they control together own less than a 35 percent profits interest in N, these entities are not disqualified persons with respect to you. Therefore, the liquidation of N and the distribution of all of its assets, subject to its liabilities, to its partners, will not result in a direct transfer of assets between a private foundation and disqualified persons with respect to the foundation, and thus will not constitute a direct act of self-dealing under section 4941.

Section 53.4941(d)-1(b)(4) of the regulations provides that a transaction between a private foundation and an organization (such as a partnership) that is not controlled by the foundation, and of which other disqualified persons do not own more than 35 percent profits interest, is not treated as an indirect act of self-dealing between the foundation and such disqualified persons solely because of the ownership interests of such persons in the organization.

Section 53.4941(d)-1(b)(5) of the regulations provides that an organization is controlled by a private foundation if the foundation or one or more of its foundation managers (acting only in that capacity) may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction, which, if engaged in with the private foundation, would constitute self-dealing.

Currently, L, M and a related person constitute only three of the 10 members of your Board of Directors. Therefore, as a minority of your Board, these persons, acting in that capacity, lack the power or authority to require you to take or to refrain from taking any action. As a result, under section 53.4941(d)-1(b)(5) of the regulations, you are not treated as controlling N. Thus, your ownership in N is not aggregated with the ownership of R and S. Consequently, under section 53.4941(d)-1(b)(4), the liquidation of N and the distribution of all of its assets, subject to its liabilities, to its partners, will not result in an indirect transfer of assets between a private foundation and disqualified persons with respect to the foundation, and thus will not constitute an indirect act of self-dealing under section 4941 of the Code.

#### Section 4945

Section 4945 of the Code imposes an excise tax on each "taxable expenditure" made by a private foundation. Under section 4946(b), a "foundation manager" with respect to a private foundation includes an officer, director or trustee of the foundation.

Section 53.4945-6(a) of the regulations states that under section 4945(d)(5) of the Code, the term "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-6(b)(1) of the regulations provides that certain types of expenditures ordinarily will not be treated as taxable expenditures under section 4945(d)(5) of the Code. Section 53.4945-6(b)(1)(i) refers to expenditures to acquire investments entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B) of the Code.

Your assets include a limited partnership interest in N. N owns certain real property. The proposed restructuring transactions will consist of the liquidation and distribution to you of N's assets, which you will own as a tenant-in-common with the other N partners. Consequently, any expenditures you incur in connection with the acquisition of N's assets, under section 53.4945-6(b)(1)(i) of the regulations, will not constitute taxable expenditures under section 4945 of the Code.

#### Ruling 2

Q is a limited partnership in which you are the limited partner and N is the general partner. You represent that because N is not a disqualified person with respect to you, Q is not a disqualified person with respect to you.

You contemplate that Q will liquidate and distribute all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests. As a result, the apartment building and the ground lease currently owned by Q will be owned pro rata by Q's partners as tenants-in-common.

#### Section 4941

Section 4941(a) of the Code imposes excise taxes on each act of self-dealing between a disqualified person and a private foundation.

Therefore, based on this representation, the liquidation of Q and the distribution of all of its assets, subject to its liabilities, to its partners, will not result in a direct transfer of assets between a private foundation and disqualified persons with respect to the foundation, and thus will not result in a direct transfer of assets between a private foundation and disqualified persons with respect to the foundation, and thus will not constitute a direct act of self-dealing under section 4941 of the Code.

#### Section 4945

Section 4945 of the Code imposes an excise tax on each "taxable expenditure" made by a private foundation. Under section 4946(b), a "foundation manager" with respect to a private foundation includes an officer, director or trustee of the foundation.

Section 53.4945-6(a) of the regulations states that under section 4945(d)(5) of the Code, the term "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-6(b)(1) of the regulations provides that certain types of expenditures ordinarily will not be treated as taxable expenditures under section 4945(d)(5) of the Code. Section 53.4945-6(b)(1)(i) refers to expenditures to acquire investments entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B) of the Code.

Your assets include a limited partnership interest in Q. Q owns certain real property. The proposed restructuring transactions will consist of the liquidation and distribution to you of Q's assets, which you will own as a tenant-in-common with the other Q partner. Consequently, any expenditures you incur in connection with the acquisition of Q's assets, under section 53.4945-6(b)(1)(i) of the regulations, will not constitute taxable expenditures under section 4945 of the Code.

### Ruling 3

P is a limited partnership in which you, R and S are the limited partners and W is the general partner. You represent that P is a disqualified person with respect to you.

You contemplate that P will liquidate and distribute all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests. As a result, the apartment complex currently owned by P will be owned pro rata by P's partners as tenants-in-common.

### Section 4941

Section 4941(a) of the Code imposes excise taxes on each act of self-dealing between a disqualified person and a private foundation. However, section 4941(d)(2)(F) and section 53.4941(d)-3(d)(1) of the regulations provide that various types of restructuring transactions between a private foundation and a corporation are not acts of self-dealing. Although P is a partnership, the restructuring transactions that will occur between you and P are similar to the restructuring transactions described in section 4941(d)(2)(F) of the Code that occurred between a private foundation and a corporation. Therefore, the proposed restructuring transactions involving you and P will not constitute acts of self-dealing under section 4941.

### Section 4945

Section 4945 of the Code imposes an excise tax on each "taxable expenditure" made by a private foundation. Under section 4946(b), a "foundation manager" with respect to a private foundation includes an officer, director or trustee of the foundation.

Section 53.4945-6(a) of the regulations states that under section 4945(d)(5) of the Code, the term "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-6(b)(1) of the regulations provides that certain types of expenditures ordinarily will not be treated as taxable expenditures under section 4945(d)(5) of the Code. Section 53.4945-6(b)(1)(i) refers to expenditures to acquire investments entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B) of the Code.

Your assets include a limited partnership interest in P. P owns certain real property. The proposed restructuring transactions will consist of the liquidation and distribution to you of P's assets, which you will own as a tenant-in-common with the other P partners. Consequently, any expenditures you incur in connection with the



acquisition of P's assets, under section 53.4945-6(b)(1)(i) of the regulations, will not constitute taxable expenditures under section 4945 of the Code.

#### Ruling 4

Section 4941 of the Code imposes excise taxes on each act of self-dealing between a disqualified person and a private foundation.

Section 4945 of the Code imposes an excise tax on each "taxable expenditure" made by a private foundation. The tax is paid by the foundation and by the "foundation manager" who agreed to the making of the expenditure. Under section 4946(b), a "foundation manager" with respect to a private foundation includes an officer, director or trustee of the foundation.

Section 53.4945-6(a) of the regulations states that under section 4945(d)(5) of the Code, the term "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-6(b)(1) of the regulations provides that certain types of expenditures ordinarily will not be treated as taxable expenditures under section 4945(d)(5) of the Code. Section 53.4945-6(b)(1)(i) refers to expenditures to acquire investments entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B) of the Code, and section 53.4945-6(b)(1)(ii) of the regulations refers to reasonable expenses with respect to these investments.

#### Section 4941

Payment by N and O for their proportionate share of the costs of obtaining a letter ruling from the Internal Revenue Service to ensure that the proposed restructuring transactions, as a result of which you will own as a tenant-in-common N's, O's and P's assets, will not constitute an act of self-dealing under section 4941 of the Code because neither N nor O is a disqualified person with respect to you.

In the case of P, Ruling No. 3 concluded that the proposed restructuring transaction involving P will not constitute an act of self-dealing under section 4941 of the Code. Similarly, any reasonable expenditures you incur in connection with this restructuring transaction, including obtaining a letter ruling from the Internal Revenue Service concerning the tax consequences relating to this proposed restructuring transaction, will not constitute an act of self-dealing under section 4941.

#### Section 4945

Because N, O and P constitute your investments, it is reasonable for you to seek a letter ruling from the Internal Revenue Service to ensure that the proposed

restructuring transactions, as a result of which you will own as a tenant-in-common N's, O's and P's assets, will not result in adverse tax consequences to you and to your directors. Accordingly, your payment of the cost of obtaining a letter ruling constitutes reasonable expenses with respect to your investments within the meaning of section 53.4945-6(b)(1)(ii) of the regulations.

### Rulings

1. The liquidation of N and the distribution of all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests will not constitute an act of self-dealing under section 4941 of the Code or a taxable expenditure under section 4945.
2. The liquidation of O and the distribution of all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests will not constitute an act of self-dealing under section 4941 of the Code or a taxable expenditure under section 4945.
3. The liquidation of P and the distribution of all of its assets, subject to its liabilities, to its partners in proportion to their respective ownership interests will not constitute an act of self-dealing under section 4941 of the Code or a taxable expenditure under section 4945.
4. Notwithstanding the ownership interests of L and M in O and P, the payment by each partnership of its proportionate share of the cost of obtaining the rulings set forth in this ruling request will not constitute an act of self-dealing under section 4941 of the Code or a taxable expenditure under section 4945.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides it may not be used or cited by others as precedent.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven B. Grodnitzky  
Manager  
Exempt Organizations  
Technical Group 1

Enclosure  
Notice 437